RESERVED

Civil Misc. Writ Petition no. 32436 of 1998-old number
Civil Misc. Writ Petition no. 3565 of 2001 – New number

Smt. Madhu Kapoor--

Petitioner

Versus

The Basic Shikha Adhikari and others.

Respondents

Hon'ble M.M. Ghildiyal J.

By means of this petition the petitioner has challenged the orders dated 08.02.1996 passed by the Committee of Management, respondent no.2, terminating the services of the petitioner, dated 18.03.1997 passed by the Basic Shiksha Adhikari, Tehri Garhwal, respondent no.1 granting approval to the termination of the petitioner and dated 11.06.1998 of the Basic Shiksha Adhikari, Tehri Garhwal rejecting the representation of the petitioner.

Heard Sri Manoj Tiwari learned counsel for the petitioner, Sri Rakesh Thapliyal learned counsel for the respondent no.2, Committee of Management and learned Standing Counsel for respondent no. 1.

Brief facts of the case are that the petitioner was appointed on 29.1.1980 as Assistant Teacher in Swami Ram Tirath Vidya Mandir, Tehri Garhwal which is a recognized/aided Junior High School. The petitioner was confirmed on the post of Assistant Teacher in the year 1990. The petitioner applied for study leave for the period 15.10.1990 to 11.5.1991. After availing of the leave the petitioner submitted joining report to the Principal of the School on 13.05.1991. However, she was not permitted to join duties by the Principal. Consequently, she submitted an application to the District Education Officer, Tehri Garhwal on 15.5.1991 who directed the Committee of Management/Principal for necessary action. Even after the direction of respondent no.1 the Principal did not permit her to join and informed the District Education Officer that in view of the resolution of the Committee of Management the petitioner cannot be permitted to resume duties in the school. The letter of the Principal of the institute is part of the record. The petitioner was continuously visiting the institute but she was not permitted to join. She also sent a representation to the District Education Officer seeking

his intervention and to the Regional Assistant Director(Basic). She made a number of representations. However, she was not permitted to join.

On 23.10.1996 the petitioner received letter dated 9.10.1996 directing the petitioner to report for duty within 15 days. Since this letter was received at the address of her husband who was serving at Bijnore the petitioner rushed to the institute to join her duties. However, she was not again permitted to join. Consequently on 30.10.1996 she sent her joining report by post stating therein that since the Principal/Management did not permit her she is sending the joining report. A copy of this letter was also sent to the District Education Officer as well as to the Regional Assistant Director(Basic). On 31.3.1997 the Manager of the institute issued a letter to the petitioner that despite notice dated 9.10.1996 and publication of notification in newspaper **"Bhagirthi Kinare"** whereby the petitioner was directed to resume duties but she has not turned up and the Committee of Management in its meeting held on 8.2.1997 has terminated the services of the petitioner to which the District Education Officer has granted approval on 18.3.1997. Aggrieved with this the petitioner filed writ petition no.25510 of 1997 challenging the termination of her services. The said writ petition was disposed of with the directions to the District Education Officer to decide the representation filed by the petitioner within two months by a speaking order after affording opportunity of hearing to her. However, the Basic Shiksha Adhikari without hearing the petitioner disposed of the representation of the petitioner against which the present writ petition has been filed.

Learned Standing Counsel has filed counter affidavit and the Committee of Management has filed two counter affidavits.

The learned counsel for the petitioner has submitted that the alleged notice was got published in the newspaper **"Bhagirthi Kinare".** The said newspaper is a local weekly paper and has no wide circulation whatsoever outside Tehir city and even within Tehri city. Very few persons are aware about the said newspaper. The respondents who had issued the letter dated 9.10.1996 to the petitioner at her Bijnore address deliberately got notice published in such a newspaper which has no wide circulation so that it could not reach to the petitioner. The learned counsel for the petitioner has placed reliance on the case reported in **1994 (3) U.P. Local Bodies & Educational**

Cases 1551 and 1999 (2) UPLBEC 70, Ashok Kumar Tripathi Vs. District Inspector of Schools and others in which the Hon'ble Court was of the view that the publication in a newspaper not having wide circulation is no notice in the eye of law. I find force in the submission of the learned counsel for the petitioner.

The respondents have denied the allegations made in the petition. It was stated in the counter affidavit that no leave was granted to the petitioner and she remained absent for about six years till termination of her services. It was further stated in the counter affidavit of the Committee of Management that on 13.5.1991 neither the petitioner presented herself nor submitted any application for joining. However, it is admitted by the respondents that the Basic Shiksha Adhikari has forwarded the application of the petitioner on 15.5.1991 and issued directions to the Management/Principal. It was stated that she was never refused joining. On the contrary the petitioner did not present herself for joining. The stand taken by the respondents is contradictory. Annexure 1 to the counter affidavit filed by the Management is the resolution passed by the Committee of Management in which it is resolved that whenever Smt. Madhu Kapoor presents herself for joining she will not be permitted by the Principal without prior permission of the Manager. The petitioner has filed a letter of the Principal addressed to the Basic Shiksha Adhikari alongwith rejoinder affidavit in which the Principal has stated that the petitioner cannot be permitted to join without prior permission of the manger in view of the resolution no.2 dated 4.7.1988. In the second counter affidavit filed by the Management in para no.10 it is stated that there was no such direction to the Principal by the Committee of Management not to permit the petitioner to join without prior permission of the Manager. Thus, there is contradiction in the stand taken by the Committee of Management in both the counter affidavits.

The services of teachers of Junior High Schools are governed by U.P. Recognised Basic School (Junior High School) Recruitment and Conditions of Services of Teachers) Rules, 1978. Rule 15 of the said Rules provides that no head master or assistant teacher of a recognized school may be discharged or removed or dismissed from service or reduced in rank or subjects to any institution in emoluments or served with notice of

termination of services except with the prior approval in writing of the District Basic Education Officer.

The learned counsel for the petitioner has submitted that the District Basic Education Officer has approved the termination of the services of the petitioner on 18.3.1997 whereas the Committee of Management has terminated her services on 8.2.1997 and as such the termination was wrong. I find force in the submission of the learned counsel for the petitioner. Order dated 31.3.1997 is annexure 8 to the writ petition which is a letter issued bythe Manager to the petitioner in which it is stated that inspite of notice to the petitioner, the petitioner has not presented in the institute for joining.

'' अतः प्रबन्धक कार्यकारिणी के द्वारा प्रस्ताव संख्या–3 दिनांक 8–2–1997 के द्वारा आपकी सेवाऐं समाप्त कर दी गई हैं श

Undisputedly the services of the petitioner were terminated on 8.2.1997 whereas the District Basic Education Officer on 18.3.1997 granted the approval. This is subsequent approval and in view of the law laid down by the Allahabad High Court in the case of **Smt. Sheela Dwivedi Vs. Basic Shiksha Adhikari and others, reported in 2000 (1) U.P.LBEC 693** that since no approval was sought from the Basic Shiksha Adhikari prior to termination of services as provided under Rules 15 of the U.P. Recognised Basic School (Junior High School) Recruitment and Conditions of Services of Teachers) Rules, 1978 the termination order is not sustainable.

The learned counsel for the respondents have argued that on 8.2.1997 the resolution was passed which was sent to the District Basic Education Officer for approval who granted the approval on 18.3.1997. The letter issued by the Manager to the petitioner on 31.3.1997 specifically states that the services of the petitioner were terminated with effect from 8.2.1997.

The learned counsel for the petitioner has further submitted that the Management for the charges of unauthorized absence never issued any show cause notice or any chargesheet to the petitioner from duty. The learned counsel for the petitioner has placed reliance on the case of **Deoki Nandan Prasad Vs. State of Bihrar, reported in 1971(2) Supreme Court Cases 330** wherein the Apex Court in para no.22 has held that even if it is a question of automatic termination of services for being continuously absent

for over a period of five years. Article 311 of the Constitution of India apples to such cases as laid down by the Apex Court in **Jai Shanker Vs, State of Rajasthan reported in AIR 1966 Supreme Court Cases 492.** Applying the principle the Apex Court in D.K.Yadav Vs. J.M. Industries, reported in (1993) 3 Supreme Court Cases 259 has held that there cannot be any automatic termination under Certified Standing order on absence without leave. The principles of natural justice any duty to act in just, fair and reasonable manner must be read into the Standing Orders. It was further held that termination of services results in deprivation of right to livelihood implicit under Article 21 of the Constitution therefore, it is affected in accordance with just, fair and reasonable procedure.

Rule 16 of the U.P. Recognized Basic School (Junior High School) Recruitment and Conditions of Services of Teacher) Rules, 1978 deals with disciplinary proceedings. The said rule does not provide for automatic termination of services of a teacher for unauthorized absence. Undisputedly disciplinary proceedings were never initiated against the petitioner.

The learned counsel for the petitioner has further submitted that in the writ petition filed by the petitioner the Allahabad High Court while disposing of the writ petition directed the Basic Shiksha Adhikari to dispose of the representation of the petitioner within two months by a speaking order after affording opportunity of hearing to the petitioner and the Committee of Management. The submission of the petitioner is that she was not given opportunity of hearing. On the representation of the petitioner the Basic Shiksha Adhikari had fixed 27.11.1997 on which date the case was adjourned for 8.12.1997. The case was again adjourned for 18.12.1997. On every date the petitioner was present and on 18.12.1997 the petitioner was informed that she will be intimated about the next date. Since she was not informed about any date. Thereafter the petitioner sent a telegram on 25.12.1997. Thereafter letters were sent on 28.1.1998, 2.3.1998, 15.4.1998 and 1.7.1998. However, she was not informed about the date fixed. On 27.8.1998 when the petitioner sent her representative to Basic Shiksha Adhikari office to enquire about the date fixed it was revealed that her representation has been rejected on 11.6.1998. The petitioner was not heard at all by the respondent no.1 Basic Shiksha Adhikari before taking a decision in the matter despite specific directions issued by the High Court. In the

order impugned the Basic Shiksha Adhikari has submitted that the petitioner was informed by telegram on 22.12.1997 to the present on 26.12.1997 and again on 3.6.1998 she was informed by telegram to be present on 11.6.1998. However, she did not turn up and the representation has been decided on the basis of facts mentioned in the representation of the petitioner dated 27.11.1997. The respondents have not filed the proof of sending telegrams and it is very strange that inspite of sending letters the respondents have used the procedure of sending telegrams which is uncommon in the circumstances.

The respondents in the counter affidavit have submitted that in fact, the petitioner's husband is a teacher at Bijnore and the petitioner with the help of her husband is running a coaching institution. She is not at all interested in joining the services and the writ petition has been filed just to take pensionary benefits. No document in support of averments has been filed.

For the reasons stated above the writ petition is allowed. The orders dated 08.02.1996 passed by the Committee of Management, respondent no.2, terminating the services of the petitioner, dated 18.03.1997 passed by the Basic Shiksha Adhikari, Tehri Garhwal, respondent no.1 granting approval to the termination of the petitioner and dated 11.6.1998 of the Basic Shiksha Adhikari, Tehri Garhwal rejecting the representation of the petitioner are quashed. In the circumstances, the petitioner is entitled to get 50 per cent of back wages provided she submits an affidavit that she was not engaged anywhere else during this period. No order as to costs.

August 29, 2003
MPS

(M. M. Ghildiyal, J.)